

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

BOOKHAM, INC.,

Plaintiff,

v.

UNAXIS BALZERS AG and UNAXIS
BALZERS LTD.,

Defendants

No. C-06-0885 MMC

**ORDER GRANTING MOTION TO
DISMISS; VACATING HEARING**

(Docket No. 25)

Before the Court is the motion filed August 25, 2006 by defendants Unaxis Balzers AG and Unaxis Balzers Ltd. (jointly, "Unaxis") to dismiss the instant action for lack of subject matter jurisdiction. Plaintiff Bookham, Inc. ("Bookham") has filed opposition; Unaxis has filed a reply. Having considered the papers filed in support of and in opposition to the motion, the Court finds the matter appropriate for decision without oral argument, see Civil L.R. 7-1(b), and hereby VACATES the October 6, 2006 hearing.

For the reasons set forth in Unaxis's motion and reply, Bookham has not demonstrated an objectively reasonable apprehension that it, or any of its customers, face an infringement suit by Unaxis. Accordingly, the Court lacks jurisdiction over Bookham's claim for declaratory relief. See, e.g., Phillips Plastics Corp. v. Kato Hatsujou Kabushiki Kaisha, 57 F.3d 1051, 1053 (Fed. Cir. 1995) (finding jurisdiction over declaratory relief claim lacking in absence of "action by the patent holder sufficient to create an objectively

1 reasonable apprehension that suit will be brought against the declaratory plaintiff”);
2 Arrowhead Industrial Water, Inc. v. Ecolchem, Inc., 846 F.2d 731 (Fed. Cir. 1988)
3 (describing test for declaratory relief jurisdiction as requiring “apprehension that plaintiff or
4 its customers face an infringement suit or threat of one”) (internal quotation, citation, and
5 emphases omitted).

6 Assuming, arguendo, the Court has jurisdiction over the declaratory relief claim, the
7 Court declines to exercise such jurisdiction. The parties were engaged in licensing
8 negotiations prior to Bookham’s filing of the instant action, and thereafter, shortly before the
9 filing of the instant motion, Bookham sent Unaxis a letter stating “[t]here may be mutual
10 benefit . . . in discussing alternative commercial arrangements instead of resolving the
11 issue through the courts.” (See Haggerty Decl. Ex. 11.) In light of the parties’ ongoing
12 licensing negotiations, entertaining the instant action for declaratory relief “would be
13 inconsistent with the sound policy of promoting extrajudicial dispute resolution, and
14 conservation of judicial resources.” See EMC Corp. v. Norand Corp., 89 F.3d 807 (Fed.
15 Cir. 1996) (noting “court may take into account the pendency of serious negotiations to sell
16 or license a patent in determining whether to exercise jurisdiction over a declaratory
17 judgment action”) (internal quotation and citation omitted).

18 Bookham has not alleged an independent basis for jurisdiction over its state law
19 claims, and has not responded to Unaxis’s argument that the Court should decline to
20 exercise supplemental jurisdiction over said claims. Where the Court has dismissed all
21 claims over which it has original jurisdiction, it may decline to exercise supplemental
22 jurisdiction over any remaining state law claims. See 28 U.S.C. § 1367(c)(3). “[I]n the
23 usual case in which all federal-law claims are eliminated before trial, the balance of factors
24 to be considered under the pendent jurisdiction doctrine -- judicial economy, convenience,
25 fairness, and comity -- will point toward declining to exercise jurisdiction over the remaining
26 state-law claims.” Carnegie-Mellon University v. Cohill, 484 U.S. 343, 350 n.7 (1988).
27 Here, where the Court has issued no rulings on the merits of any of Bookham’s claims and
28 the action is at a very early stage, there is no reason for the Court to retain supplemental

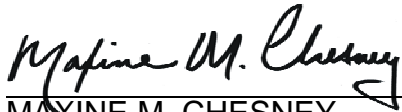
jurisdiction over Bookham's state law claims.

Accordingly, Unaxis's motion to dismiss is hereby GRANTED.

The Clerk shall close the file.

IT IS SO ORDERED.

Dated: September 25, 2006


MAXINE M. CHESNEY
United States District Judge